probability, he would continue to receive the pension until the age of 60 years. I think a multiplier of ten years would be fair and reasonable and in the circumstances I award $9,500 being his future loss of pension.

As for gratuity, the difference is $2,646 and in view of the fact that he would be entitled when he retires in 1991 and subject to contingencies I would deduct one-third from the amount, thus making it $1,766.

5. *Special damages.*

This was agreed at $546.

6 *Interest.*

Following the principle in *Jefford* v. *Gee*[2], I award interest for general damages for pain and suffering and loss of amenities at eight per cent per annum from date of service of writ and four per cent per annum on special damages from date of accident.

In my judgment, the second plaintiff is therefore entitled to $48,766 as general damages and $546 as special damages with interest and costs.

Order accordingly.

Solicitors: *Triptipal Singh & Co.; V.P. Nathan & Partners.*

JEMCO SDN. BHD. v. ANDREW LIAU KA LIENG & ORS.

[O.C.J. (Charles Ho J.), May 21, 1984]
[Kota Kinabalu – Civil Suit No. S28 of 1982]

Partnership law – One partner acknowledging debt after retirement of his three partners – Whether retired partners affected – Limitation Ordinance, Sabah – Partnership Act 1961, ss. 38(2), 39 & 40.

The four defendants were partners of a firm trading under the name and style of Syarikat Universal Parts Services ("the firm"). The firm owed the plaintiffs a sum of money for goods supplied by the plaintiffs in 1978. The 1st defendant tendered 14 cheques issued in the name of the firm to the plaintiffs to settle the debt by instalments, and one of the cheques was paid on November 14, 1979. About a year before the 14 cheques were handed over to the plaintiffs, the 2nd, 3rd, and 4th defendants had retired from the firm. The present action was commenced on February 22, 1982, more than three years after the cause of action arose. The limitation period was three years. It was common ground that had it not been for the rendering of the cheques and the cashing of one of them, the action against all the 4 defendants would have been statute-barred. Judgment was entered against the 1st defendant by default of appearance. The 2nd, 3rd, and 4th defendants contended that the act of acknowledgment of the 1st defendant could not affect them because at the time the cheques were given they were no longer partners of the firm and the act was done without their knowledge or authority.

Held: dismissing the claim against the 2nd, 3rd, and 4th defendants: since oral notice of the retirements of the 2nd, 3rd, and 4th defendants had in fact been given to the representative of the plaintiffs at or before the time when the 14 cheques were handed over to him, the act of acknowledgment by the 1st defendant did not affect the other three defendants.

Cases referred to:

(1) *Tan Boon Cheo* v. *Ho Hong Bank Ltd.* [1934] M.L.J. 180.
(2) *Tucker* v. *Tucker* [1894] 3 Ch. 429.

CIVIL SUIT.

Cecil Ian Robertson for the plaintiffs.
Edwin Tsen for the 2nd, 3rd & 4th defendants.

Cur. Adv. Vult.

Charles Ho J.: The Plaintiffs in this action claim against the defendants as the acceptor of two bills of exchange which, upon being presented for payment, were dishonoured. The two bills of exchange dated June 29, 1978, and July 24, 1978, respectively were for the sums of M$ 22,380.75 and M$52,750.87 respectively.

The facts which are not in dispute are simple. The four defendants were partners of a firm and were all trading under the name and style of Syarikat Universal Parts Services (hereinafter called the firm). The Plaintiffs, Jemco International Sdn. Bhd. started dealing with the firm in January 1978 by supplying the firm hydraulic hoses and other goods. The firm paid for the goods supplied under the first few shipments but failed to do so in respect of subsequent shipments and the account showed the firm owing the plaintiffs a sum of $68,228.78. Though this action is based on the two bills of exchange both parties however agreed at the hearing that should the plaintiffs succeed in this action the judgment should be for the sum shown on account and not the amounts shown on the two bills. The two bills of exchange were issued on July 24, 1978 and June 29, 1978 respectively and were accepted by the firm. Upon being duly presented for payment they were dishonoured

and the Public Bank Berhad notified the plaintiffs of the dishonour. After sometime the plaintiffs decided to withdraw the bills from the bank and to collect direct from the firm.

In October 1979 the Sales Manager of the Plaintiffs (P.W.) met the 1st Defendant, Andrew Liau, and threatened to take legal action to recover the amounts owing by the firm. The 1st Defendant informed him that he was unable to settle the debts and offered to pay by instalments. P.W.1 accepted the offer and collected 14 cheques from the 1st Defendant as settlement of the full amount owing. Only one out of the 14 cheques was honoured and this was on November 14, 1979. Five of the remaining 13 cheques were presented for payment but were dishonoured. The other 8 cheques were not presented because the account was closed. All the cheques were signed by the 1st Defendant and issued in the name of the firm. About a year before the said 14 cheques were handed to the Plaintiffs the 2nd, 3rd and 4th Defendants had retired as partners of the firm. This was evidenced by an agreement made between the 1st Defendant on the one part and the 2nd, 3rd and 4th Defendants on the other part. In the said agreement the parties agreed, *inter alia*, that the 1st Defendant would assume all the rights and liabilities of the firm and to indemnify the 2nd, 3rd and 4th Defendants from all claims and demands made against them.

The present action was commenced by the plaintiffs on February 22, 1982. No appearance was filed on behalf of the 1st Defendant and the Plaintiffs entered judgment against him for the whole amount claimed together with interest and costs on April 27, 1982. The action was filed more than three years after the cause of action arose. It is common ground that had it not been for the rendering of the cheques and the cashing of one of the cheques for $5,000/– the action against all the 4 Defendants would have been statute barred under the Limitation Ordinance applicable to Sabah. The period of limitation is 3 years in the present case. The 2nd, 3rd and 4th Defendants have pleaded limitation as a defence. There is little doubt that the handing over of the 14 cheques and cashing of one of the cheques amounted to acknowledgement of the debts by the 1st Defendant and the period of limitation should be calculated from the date when the said cheques were given. Counsel on both sides therefore were in agreement that as far as the 1st Defendant is concerned the present action is not statute-barred. The 2nd, 3rd and 4th Defendants in their defence, however, say that the act of the 1st Defendant cannot affect them because at the time the cheques were given they were no longer partners of the firm and the act was done without their knowledge or authority. This is the gist of their defence.

In this case the court has first of all to decide whether at the time the cheques were given the plaintiffs knew of the retirement of the other partners or whether any form of notice was given to the Plaintiffs. If the court finds that some form of notice was in fact given only then it needs to consider whether such notice is sufficient in law.

In his evidence the Sales Manager of the Plaintiffs says that when he accepted the 14 cheques he did not know that the partnership was dissolved. He says that no oral or written notice of any kind was given to him by any of the defendants. He denied that he mentioned to Chan Kok Keong (D.W.3) sometime in July or August 1978 that there would be a change in the partnership of the firm and that his uncle (Chan's) would be retiring.

All the witnesses, except D.W.1, called by the defence claim that P.W.1 knew about the dissolution of the partnership in late 1978 and early 1979. The 1st Defendant (D.W.2) in his evidence says that he mentioned to P.W.1 sometime in June or July about the impending retirement of the other partners and that either in December 1978 or January 1979 he told P.W.1 that the other partners had withdrawn from the partnership. According to D.W.3 whilst he was under training in Kuala Lumpur in August 1978 P.W.1 mentioned to him that his brother-in-law and the other parters of the firm would be retiring. At the end of 1978 he met P.W.1 again when P.W.1 came to the office of the firm. P.W.1 asked him how the 1st Defendant was treating him since his brother-in-law and Mr. Lim had retired. It is clear from the evidence that everytime P.W.1 came to Sandakan he went to the office of the firm and very often he was entertained by the 1st Defendant and some of the staff of the firm. It is very unlikely that P.W.1 who had made quite a number of visits to Sandakan between October 1978 and October 1979 did not come to hear about the retirement of the other partners. I do not think that D.W.3 invented the story about his conversations with P.W.1 both in Kuala Lumpur and in the firm's premises. I find that P.W.1 knew about the retirement of the 2nd, 3rd and 4th Defendants as partners of the firm for some time before he accepted the 14 cheques and that in all probability he was notified of this orally by the 1st Defendant.

Next I have to consider whether the oral notice given by the 1st Defendant to the representative of the Plaintiffs is sufficient in law. On this point it is contended by Counsel for the Plaintiffs that it is not sufficient for the Plaintiffs' representative to be informed in vague terms. Counsel says that formal notice must be given and that the deed of dissolution should have been shown to P.W.1 or the Company. Counsel further says that it was the duty of 2nd, 3rd and 4th Defendants to give notice either orally or in writing and not through 1st Defendant orally.

Both sides referred the court to the decision of *Tan Boon Cheo* v. *Ho Hong Bank Ltd.*[1] I do not think that case is of any assistance as the court in that case found that no notice in any form was given to the Bank. Neither, I think, is *Tucker* v. *Tucker*[2] of much assistance as it dealt with secret retirement.

In law what amounts to notice of dissolution and retirement is fully set out in *Lindley* on the Law of Partnership, 14th Edition p.348. I think for the purposes of the present case I need only quote these passages: –

"But when an apparent partner retires, or when a partnership between several known partners is dissolved, the case is very different; for then those who dealt with the firm before a change took place are entitled to assume that no change has occurred until they have notice to the contrary. And even those who never had dealings with the firm, and who only knew of its existence by repute, are entitled to assume that it still exists until something is done to notify publicly that it exists no longer. An old customer, however, is entitled to a more specific notice than a person who never dealt with the firm at all; and in considering whether notice of dissolution or retirement is or is not sufficient, a distinction must be made according as the person sought to be affected by notice was or was not a customer of the old firm.

When a known partner retires, or a partnership is dissolved, notice of the fact is usually given to the world at large by advertisement, and to old customers by some special communication."

"As against persons who dealt with the firm before any change in it took place, an advertisement without more is of little or no value, whether it be in the Gazette or elsewhere. But if notice in point of fact can be established, it matters not by what means; for the Partnership Act 1890 does not require, nor has it ever been held, that any particular formality must be observed. If an old customer can be shown to have seen an advertisement, that will be sufficient; and evidence that he took in a certain paper is some evidence that he knew of a dissolution advertised therein."

There are also provisions in our Partnership Act 1961 relating to the same subject. I will set them out here for ease of reference:–

"Section 39. On the dissolution of a partnership or retirement of a partner, any partner may publicly notify the same, and may require the other partner or partners to concur for that purpose in all necessary or proper acts, if any, which cannot be done without his or their concurrence.

"Section 40. After the dissolution of a partnership, the authority of each partner to bind the firm, and the other rights and obligations of the partners, continue, not withstanding the dissolution, *so far as may be necessary to wind up the affairs of the partnership,* and to complete transaction begun but unfinished at the time of the dissolution but not otherwise."

Under section 38(2) of our Partnership Act it is sufficient notice to persons who had no dealings with the firms if an advertisement is inserted in the Government *Gazette* of the dissolution or change. The Act is silent as far as old customers are concerned, *e.g.* whether any special notice needs to be given to them. The courts in this country appeared to have followed English law. The position in law, therefore, seems to be that special notice must be given to old customers and if notice in point of fact can be established, it matters not by what means. There is also no provision in the statute nor has it ever been held as to who should give the notice of dissolution or change. Section 40 of the Act is, in my opinion, of no assistance to the plaintiffs because the authority of each partner to bind the firm and the other partners continue only in "so far as may be necessary to wind up the affairs of the partnership and to complete transaction begun but unfinished at the time of the dissolution but not otherwise."

Since oral notice of the retirements of the 2nd, 3rd and 4th Defendants had in fact been given to the representative of the plaintiffs at or before the time when the said 14 cheques were handed over to him I hold that the act of the 1st Defendant (*i.e.* the acknowledgment) did not affect the 2nd, 3rd and 4th Defendants. Accordingly the claims against them are dismissed with costs.

Claims dismissed.

Solicitors: *Skinner, Lind, Robertson, Pang & Willie, Tan Pang Tsen & Co.*